IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

WEDNESDAY, THE 20TH DECEMBER 2006 / 29TH AGRAHAYANA 1928

WP(C).No. 33871 of 2005(G)

PETITIONER:

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1. A.R.UNNIKRISHNAN, MANAGER,
   S.V.H.S.S., CLAPPANA, KOLLAM.

2. R.SUDHAKARAN, PRESIDENT,
   MANAGING COMMITTEE, S.V.H.S.S., CLAPPANA,
   KOLLAM.

BY ADV. SRI.A.N.RAJAN BABU
SMT.K.SUNITHA VINOD

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY
   SECRETARY, GENERAL EDUCATION DEPARTMENT,
   GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

2. THE DIRECTOR OF PUBLIC INSTRUCTIONS,
   THIRUVANANTHAPURAM.

3. THE DISTRICT EDUCATIONAL OFFICER,
   KOLLAM.

4. K.SIDHARTHAN, PANDAKASALATHARA,
   CLAPPANA, NORTH P.O., KARUNAGAPPALLY, KOLLAM.
   (FORMER MANAGING COMMITTEE MEMBER,
   S.V.H.S.S., CLAPPANA, KOLLAM)

5. K.CHAKRAPANI, MANAGING COMMITTEE
   MEMBER, S.V.H.S.S., CLAPPANA, KARUNAGAPPALLY,
   KOLLAM.

6. D.SUBHASHINI, MANAGING COMMITTEE
   MEMBER, S.V.H.S.S., CLAPPANA, KOLLAM.

7. S.SWAMINATHAN, PANIKKASSERY PUTHEN VEEDU
   (VELASSERIL), CLAPPANA, KOLLAM.

8. A.ANILKUMAR, ANIL BHAVANAM, CLAPPANA.

9. P.M.RAJAGOPALAN, KULIRMA, CLAPPANA,
KOLLAM.

10. S.VISWAMBHARAN, PANNAKKATTIL,
CLAPPANA, KOLLAM.

11. S.SOBHANAN,
KURUKKASSERIL, CLAPPANA, KOLLAM.

12. S.ABHILASH, KUNNEL NIVAS,
CLAPPANA, KOLLAM.

ADDL. RESPONDENTS:

13. R. SINDHU, HIGHER SECONDARY SCHOOL TEACHER IN PHYSICS,
S.V.H.S.S., CLAPPANA, KOLLAM RESIDING AT AMBANATTU HOUSE,
KOTTAKAPURAM, CLAPPAN.

14. DEEPA L.S., H.S.S. TEACHER IN ECONOMICS, DO. RESIDING AT
LATHIKALAYAM, MANAKKARA, SASTHAMCOTTAH.

15. RAKHI V., H.S.S. TEACHER IN GEOGRAPHY, DO. RESIDING AT
DEEPTHI, KARAKKAMANDAPAM, NEMOM P.O., TVM.

16. VIJU V., H.S.S. TEACHER IN MALAYALAM DO. RESIDING AT GRANMA,
NEERAVIL, PERINADU P.O., KOLLAM,

17. S. JAYA CHANDRA KUMAR, S/O. SREEDHARA PANICKER, SECRETARY,
S.N.D.P. BRANCH NO.443, CLAPPANA SOUTH P.O., KARUNAGAPPALLY.

18. K. DHARMADAS, S/O. KESAVAN, SECRETARY, SNDP BRANCH NO.181,
CLAPPANA NORTH, KARUNAGAPPALLY.

19. RAJAN, S/O. KUNJU PANICKER, ADMINSTRATIVE CONVENOR,
SNDP BRANCH NO.182, CLAPPANA CENTRAL, KARUNAGAPPALLY.

(ADDL. RESPONDENTS 13 TO 16 IMPLEADED AS PER ORDER ON IA NO.3673/06
DATED 20/12/2006
ADDL. RESPONDENTS 17 TO 19 IMPLEADED AS PER ORDER ON IA 13388/2006 DATED
20/12/2006)

R4 BY ADV. SRI.P.B.SURESH KUMAR
R1 TO R3 BY SHRI T.T. MUHAMOOD, GOVERNMENT PLEADER
SRI.M.V.THAMBAN

ADDL. R17 TO R19 BY ADV. SRI.P.GOPALAKRISHNAN (MVA)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 29/11/2006, ALONG WITH WPC NO. 15095 OF 2006 WPC NO. 19251 OF 2006
& WPC NO. 28810 OF 2006 THE COURT ON 20/12/2006 DELIVERED THE
FOLLOWING:

WPC 33871/2006

ORDER ON IA NOS.3553, 11516, 17276, 17277 & 17281 OF 2006

DISMISSED.

ORDER ON IA NOS.3673 & 13388 OF 2006

ALLOWED.

20/12/2006 SD/- A.K. BASHEER, JUDGE.

APPENDIX IN WPC 33871/20005

EXT.P1-TRUE COPY OF ORDER DATED 30.12.2003 OF R3

EXT.P2-TRUE COPY OF THE BYE-LAW APPROVED AS PER ORDER DATED 6.9.1964 OF THE REGIONAL DEPUTY DIRECTOR OF PUBLIC INSTRUCTIONS, TVM.

EXT.P3-TRUE COPY OF REPRESENTATION DATED 1.6.2005 FILED BY RESPONDENTS 4 TO 9 BEFORE R3

EXT.P4-TRUE COPY OF APPLICATION FOR CHANGE OF MANAGEMENT FILED ALONG WITH EXT.P3 REPRESENTATION BEORE R3

EXT.P5-TRUE COPY OF JUDGMENT DATED 14.6.2005 IN WPC 17682/05

EXT.P6-TRUE COPY OF RESOLUTION DATED 2.5.2005

EXT.P7-TRUE COPY OF THE RESOLUTION DATED 1.6.2005

EXT.P8-TRUE COPY OF PLAINT IN OS 354/2005 BEFORE THE MUNSIFF'S COURT, KARUNAGAPPALLY FILED BY FIRST PETITIONER.

EXT.P9-TRUE COPY OF OBJECTION ARGUMENT NOTE FILED BY R1 BEOFRE R3 DATED 18.7.2005

EXT.P10-TRUE COPY OF ORDER DATED 19.7.2005 OF R3

EXT.P11-TRUE COPY OF MEMORANDUM APPEAL DATED 25.7.2005 FILED BY PETITIONERS BEFORE R2

EXT.P12-TRUE COPY OF PROCEEDINGS DATED 25.7.2005 OF R2

EXT.P13-TRUE COPY OF REPRESENTATION DATED 26.7.2005 FILED BY R4

EXT.P14-TRUE COPY OF JUDGMENT IN WPC 22733 DATED 1.8.05

EXT.P15-TRUE COPY OF JUDGMENT IN W.P.24661/2005 DATED 5.9.05

EXT.P16-TRUE COPY OF OBJECTION SUBMITTED BY PETITIONER NO.1 DATED 26.7.2005 BEFORE R1

EXT.P17-TRUE COPY OF GO DATED 30.11.2005 OF R1

EXT.P18-TRUE COPY OF REVIEW DATED 1.12.2005 SUBMITTED BY THE PETITIONER BEFORE THE HONOURABLE MINISTER FOR EDUCATION.

EXT.P19-TRUE COPY OF NOTICE DATED 11.8.2005 OF R2

EXT.P20-TRUE COPY OF APPOINTMENT ORDER DATED 1.10.05 OF R13

EXT.P20(A)- DO. 2005-06 DATED 1.10.2005 OF R14

EXT.P20(B)- DO. OF R15

EXT.P20(C)- DO. OF R16

// TRUE COPY //

A. K. Basheer, J.

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W.P.(C)Nos.33871/2005 and 15095, 19251 and 28810 Of 2006

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Dated this the 20th day of December, 2006.

JUDGMENT

The dispute over the right of management of Shanmugha Vilasam Higher Secondary School, Clappana, has given rise to this bunch of four writ petitions. The parties and the documents as they appear in writ petition No.33871/2005 shall be referred to in the judgment unless otherwise indicated.

2. The school belongs to three sakhas of S.N.D.P. Yogam at Clappana. Three members each from the three sakhas constitute the managing committee which elects a President and Convenor from among the nine members. The convenor will be the manager of the school. The term of the managing committee is for three years or till a newly elected managing committee assumes charge. Petitioners in writ petition No.33871/2005 were elected as Convenor and President respectively of the managing committee on October 12, 2003.

3. It appears that respondents 4 to 9 who are the members of the managing committee, along with another member had submitted Ext.P3 representation before respondent No.3, the District Educational Officer, Kollam on June 1, 2005 informing him that 7 out of the 9 members of the managing committee had taken a decision on that day to elect Shri K. Sidharthan (respondent No.4) as the new manager of the school after removing petitioner No.1 from the post of manager.

The case of the petitioners is that such a meeting was never held on June 1, 2005. No resolution had been passed removing petitioner No.1 from the post of manager nor was respondent No.4 elected as the new manager. It was further contended by the petitioners that Ext.P7 resolution was not passed by a duly convened meeting of the managing committee as alleged by respondents 4 to 9. On coming to know about Ext.P7 resolution, petitioners had filed O.S.No.354/2005 before the Munsiff's Court, Karunagappally praying for a declaration that petitioner No.1 was entitled to continue as manager till he was duly removed from the managership and also that respondent No.4 was not validly appointed as manager of the school. A decree for permanent injunction restraining respondent No.4 and others from interfering with the managerial rights of petitioner No.1 was also sought. A copy of the plaint has been produced as Ext.P8.

4. In the meanwhile, the District Educational Officer had taken up the representation submitted by respondents 4 to 9 requesting for grant of approval to remove petitioner No.1 from the managership and to approve the election of respondent No.4 as the new manager. The District Educational officer allowed the above prayers and issued Ext.P10 order. The above order was challenged by the petitioners before respondent No.2. A copy of the appeal memorandum is on record as Ext.P11 and Ext.P12 is stated to be the interim order of stay passed by respondent No.2 on the appeal.

5. It is admitted by the parties that pursuant to a direction issued by this

court, Ext.P11 appeal was withdrawn by the Government from the file of respondent No.2 and heard and disposed of after affording opportunity to the parties to be heard. Consequently, Ext.P17 order was passed in which the Government took the view that respondent No.4 was entitled to continue as manager of the school from the date on which he was elected, till the expiry of the remaining period of the executive committee as provided in clause 5 of the bye-laws. The above order is challenged in Writ Petition No.33871/2005.

6. In Writ Petition No.19251/2006 the new manager (respondent No.4 in writ petition No.33871/2005) has challenged the order passed by the Regional Deputy Director of Higher Secondary Education, Thiruvananthapuram approving the appointment of respondents 7 to 10 in the said writ petition who were appointed as Higher Secondary School Teachers by the erstwhile manager who had been removed from office (petitioner No.1 in writ petition No.33871/2005.

7. Two of the four teachers mentioned above, have preferred writ petition No.15095/2006 praying for appropriate directions to the authorities concerned to allow them to mark their attendance and perform duty in the school as teachers. They also pray for a direction to pay them salary provisionally "at the rate applicable to Guest Lecturers during the period they have worked and in future till a decision is taken by the Director."

8. Writ Petition No.28810/2006 is filed by the President of the Parent Teacher Association of the school for a direction to the manager of the school to

fill up the vacancies of teachers in the school immediately.

9. Learned counsel for the parties have been heard at length. After reserving the cases for judgment, they were posted again "to be spoken to". It was contended by Shri Rajan Babu, learned counsel for the petitioners in writ petition No.33871/2005 that fresh appointments were being made in the school by the "new" manager. Shri P.B. Suresh Kumar, learned counsel for the petitioner in Writ Petition No.19025/2006 submitted that no fresh appointments were being made as alleged. However, it was admitted that special classes were being arranged by the Parent Teachers Association through teachers after regular classes.

10. As mentioned earlier, the term of office of the duly elected managing committee has expired on October 11, 2006. Shri Suresh Kumar, learned counsel for the "new manager" concedes that he is bound to quit the office of Convenor/Manager when the new committee assumes charge. He further submits that elections will have to be held in terms of the clauses contained in Ext.P2 bye-laws. But learned counsel asserts that seven out of nine members had passed a resolution removing petitioner No.1 from the post of manager and had thereafter elected respondent No.4 as the new manager. The seven out of the nine members had requested the petitioners to convene a meeting of the executive committee in order to discuss about the complaint that the petitioners had withdrawn a sum of Rs.7 lakhs from the accounts of the committee without the knowledge or permission of the committee. Since the meeting was not convened as requested,

these seven out of nine members had convened the meeting after informing the petitioners. It was in that meeting that Ext.P7 resolution was passed. Petitioners had not participated in the meeting. It is contended that the Government had considered the entire aspects of the matter in a fair and impartial manner and come to the right conclusion that the resolution had been properly passed.

11. I have carefully perused the pleadings of the parties and documents produced by them in these writ petitions. In the peculiar facts and circumstances of the case, I do not find any reason to interfere with Ext.P17 order. However, I hasten to add that Ext.P17 order will be subject to the decision to be taken by the Munsiff's Court, Karunagappally in O.S.No.354/2005. But in my view, in the meanwhile it must be ensured that fresh election is held to elect the new members of the managing committee without any delay, particularly since the term of the duly elected committee has expired more than two months back. The entire imbroglio could be resolved if fresh election is held within the time frame as directed above. Shri Suresh Kumar, learned counsel for respondent No.4 submits that elections will be held without any delay at all. The above submission is recorded. It must be ensured by the department that the committee in office does not drag its feet in the matter. Appropriate action in this regard shall be taken by the department for conduct of speedy elections. Respondent No.4 and the committee in office shall hold the election as expeditiously as possible, at any rate, within two months from the date of receipt of a copy of this judgment.

12. In view of the above finding on Ext.P17, it necessarily follows that approval of appointment of respondents 7 to 10 in writ petition No.19251/2006 who were admittedly appointed by the former manager after the election of respondent No.4 as the new manager, will also be subject to the result of the civil suit. This order will take care of writ petition No.15095/2006 also. Therefore, it is closed with the above direction as contained in Writ Petition No.19251/2006.

Writ Petition No.28810/2006 is disposed of with a direction to the manager in office to ensure that appropriate steps are taken to engage sufficient teaching staff in the school.

Munsiff's Court, Karunagappally shall dispose of O.S.No.354/2005 as expeditiously as possible, at any rate, within two months from the date of receipt of a copy of this judgment.

(A.K. Basheer)
Judge.

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